

AMENDED IN ASSEMBLY SEPTEMBER 9, 2003

AMENDED IN ASSEMBLY JUNE 26, 2003

AMENDED IN SENATE MAY 13, 2003

AMENDED IN SENATE APRIL 30, 2003

AMENDED IN SENATE APRIL 10, 2003

SENATE BILL

No. 906

Introduced by Senator Eseutia Alarcon
(Principal coauthor: Assembly Member Wiggins)

February 21, 2003

~~An act to amend Section 60622 of, and to add Section 71611.5 to, the Water Code, relating to water. An act to add Sections 31000.10 and 37103.1 to the Government Code, relating to personal services contracting.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 906, as amended, ~~Eseutia Alarcon. Water districts. Service contracts: counties and cities.~~

Existing law requires public entities to comply with certain procedures in soliciting and awarding public contracts. Existing law also authorizes public entities, under limited circumstances, to enter into a contract for the provision of services.

This bill would authorize a county or city, other than a chartered county or city, to enter into a contract for services with a private entity, if the contract would achieve cost savings and if any of the following conditions are satisfied: (1) the contract would be for new functions that the Legislature mandates or authorizes be performed by independent

contractors, (2) the services would not be available within the county or city or cannot be satisfactorily performed by county or city employees, (3) the services would be incidental to a purchase or lease contract, (4) the policy, administrative, or legal goals and purposes of the county or city could not be accomplished through the regular or ordinary hiring process, (5) the work would meet criteria for emergency appointment, (6) equipment, materials, facilities, or support services would be provided that could not feasibly be provided by the county or city, and (7) the services would be of an urgent, temporary, or occasional nature.

The bill would apply to contracts entered into on or after July 1, 2005.

This bill would specify that its provisions would not apply to specified contracts for services associated with public works, public transit, architectural, engineering, land surveying, or construction projects.

This bill would, in the event a contract for transit services is not renewed because of the enactment of this section and if the county or city performs those transit services, require the county or city to offer employment, as specified, to those former employees of the former contractor that performed those transit services. This bill would also require those former employees of the prior transit contractor that were represented by an exclusive bargaining representative, to be placed in an existing appropriate local bargaining unit. If there is not an existing appropriate local bargaining unit, this bill would require the county or city, as applicable, to continue bargaining with the exclusive bargaining representative of the former employees of the prior transit contractor hired by the county or city.

This bill would require a county, city, or city and county to adopt new practices with respect to contracting for services, and thereby would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.



~~(1) The Water Replenishment District Act requires all contracts and other documents executed by a water replenishment district to be signed by the president and secretary of the district.~~

~~This bill, instead, would require all contracts executed by the district that require or authorize the district to expend \$10,000 or more to be authorized by the board of directors and signed by the president and secretary of the district, except that the board may authorize the general manager or other authorized representative of the district to sign all other contracts and documents that do not exceed \$25,000. The bill would authorize the general manager or other authorized representative to approve and sign contracts and documents executed by the district for up to \$10,000, provided that no more than one such contract or document is signed on behalf of the district with the same person or entity in a one-year period without board approval. The additional duties required of representatives of each district by the bill would impose a state-mandated local program.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

~~Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.~~

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 60622 of the Water Code is amended to~~
2 *SECTION 1. Section 31000.10 is added to the Government*
3 *Code, to read:*

4 *31000.10. (a) Except as provided in subdivision (e), the*
5 *board of supervisors of a county may contract for all services*
6 *currently or customarily performed by county employees to*
7 *achieve cost savings, unless otherwise prohibited, when all the*
8 *following conditions are met:*

9 *(1) The county board of supervisors or the county clearly*
10 *demonstrates that the proposed contract will result in actual*
11 *overall cost savings to that county, provided that:*

12 *(A) In comparing costs, there shall be included the county's*
13 *additional cost of providing the same service as proposed by a*

1 contractor. These additional costs shall include the salaries and
2 benefits of additional staff that would be needed and the cost of
3 additional space, equipment, and materials needed to perform the
4 function.

5 (B) In comparing costs, there may not be included the county's
6 indirect overhead costs, unless these costs can be attributed solely
7 to the function in question and would not exist if that function was
8 not performed by the county. Indirect overhead costs shall mean
9 the pro rata share of existing administrative salaries and benefits,
10 rent, equipment costs, utilities, and materials.

11 (C) In comparing costs, there shall be included in the cost of a
12 contractor providing a service any continuing county costs that
13 would be directly associated with the contracted function. These
14 continuing county costs shall include, but not be limited to, those
15 for inspection, supervision, and monitoring.

16 (2) Proposals to contract out work may not be approved solely
17 on the basis that savings will result from lower contractor pay rates
18 or benefits. Proposals to contract out work shall be eligible for
19 approval if the contractor's wages are at the industry's level and
20 do not undercut county pay rates.

21 (3) The contract does not cause the displacement of county
22 employees. The term "displacement" includes layoff, demotion,
23 involuntary transfer to a new classification, involuntary transfer
24 to a new location requiring a change of residence, and time base
25 reductions. Displacement does not include changes in shifts or
26 days off, nor does it include reassignment to other positions within
27 the same classification and general location or employment with
28 the contractor, so long as wages and benefits are comparable to
29 those paid by the county.

30 (4) The savings shall be large enough to ensure that they will
31 not be eliminated by private sector and county cost fluctuations
32 that could normally be expected during the contracting period.

33 (5) The amount of savings clearly justifies the size and duration
34 of the contracting agreement.

35 (6) The contract is awarded through a publicized, competitive
36 procurement process.

37 (7) The contract includes specific provisions pertaining to the
38 qualifications of the staff that will perform the work under the
39 contract, as well as assurances that the contractor's hiring
40 practices meet applicable nondiscrimination standards.

1 (8) *The potential for future economic risk to the county from*
2 *potential contractor rate increases is minimal.*

3 (9) *The contract is with a firm. A “firm” means a private entity*
4 *that is a corporation, limited liability corporation, partnership,*
5 *nonprofit organization, or sole proprietorship.*

6 (10) *The potential economic advantage of contracting is not*
7 *outweighed by the public’s interest in having a particular function*
8 *performed directly by the county.*

9 (b) (1) *Any documents, including, but not limited to, cost*
10 *analyses, prepared by, or on behalf of, a county for the purpose of*
11 *complying with subdivision (a) shall be subject to the same level*
12 *of confidentiality that applies to proposals or bids of potential*
13 *contractors.*

14 (2) *Potential contractors may not be given access to documents*
15 *prepared by or on behalf of the county for the purpose of complying*
16 *with subdivision (a) prior to the time that bids, statements of*
17 *qualifications, or proposals, as applicable, are required to be*
18 *submitted to the county in accordance with the requirements for*
19 *competitive selection.*

20 (c) *Notwithstanding any other provision of this division,*
21 *contracting for services shall also be permissible when any of the*
22 *following conditions can be met:*

23 (1) *The contract is for new county functions and the Legislature*
24 *has specifically mandated or authorized the performance of the*
25 *work by independent contractors.*

26 (2) *The services are not available within the county workforce,*
27 *cannot be performed satisfactorily by county employees, or are of*
28 *such a highly specialized or technical nature that the necessary*
29 *expert knowledge, experience, and ability are not available*
30 *through the county workforce.*

31 (3) *The services are incidental to a contract for the purchase or*
32 *lease of real or personal property. Contracts under this criterion,*
33 *known as “service agreements,” shall include, but not be limited*
34 *to, agreements to service or maintain office equipment or*
35 *computers that are leased or rented.*

36 (4) *The policy, administrative, or legal goals and purposes of*
37 *the county cannot be accomplished through the utilization of*
38 *persons selected pursuant to the regular or ordinary county hiring*
39 *process. Contracts are permissible under this criterion to protect*
40 *against a conflict of interest or to ensure independent and unbiased*

1 findings in cases where there is a clear need for a different, outside
2 perspective. These contracts shall include, but not be limited to,
3 obtaining expert witnesses in litigation.

4 (5) The nature of the work is such that the criteria for
5 emergency appointments apply. "Emergency appointment" means
6 an appointment made for a period not to exceed 60 working days
7 either during an actual emergency to prevent the stoppage of
8 public business or because of the limited duration of the work. The
9 method of selection and the qualification standards for an
10 emergency employee shall be determined by the county. The
11 frequency of appointment, length of employment, and the
12 circumstances appropriate for the appointment of firms or
13 individuals under emergency appointments shall be restricted so
14 as to prevent the use of emergency appointments to circumvent the
15 regular or ordinary hiring process.

16 (6) The contractor will provide equipment, materials, facilities,
17 or support services that could not feasibly be provided by the
18 county in the location where the services are to be performed.

19 (7) The services are of such an urgent, temporary, or
20 occasional nature that the delay incumbent in their
21 implementation under the county's regular or ordinary hiring
22 process would frustrate their very purpose.

23 (d) (1) Except as provided in paragraph (2), this section shall
24 apply to all counties, including counties that have adopted a merit
25 or civil service system.

26 (2) This section does not apply to a charter county formed
27 pursuant to Section 3 of Article XI of the California Constitution.

28 (e) (1) This section does not apply to any contract for services
29 described in Section 4525 or Section 4529.10.

30 (2) This section does not apply to any contract that is subject
31 to Chapter 1 (commencing with Section 1720) of Part 7 of Division
32 2 of the Labor Code.

33 (3) This section does not apply to a contract for public transit
34 services, including paratransit services, if the county's transit
35 services are fully funded by Federal Transit Administration
36 assistance and the county is thereby subject to the guidelines
37 established in FTA Circular 4220 1D or any subsequent guidelines
38 or revisions issued by the Federal Transit Administration.

39 (f) Notwithstanding any other provision of law, if any contract
40 for transit services is not renewed because of the standards set

1 *forth in this section, and if the county commences to perform*
2 *transit services that were provided by the former contractor, all of*
3 *the following apply:*

4 *(1) The county shall, in accordance with established hiring*
5 *procedures, place on a preferential hiring list, in order of seniority,*
6 *any qualified former employee of the former contractor to perform*
7 *the same job functions as performed on behalf of the former*
8 *contractor.*

9 *(2) (A) If the employees of the former contractor were*
10 *represented by an exclusive bargaining representative and if*
11 *transit services, or services similar to the transit services*
12 *performed by the former contractor, are also performed by*
13 *employees of the county, the employees of the former contractor*
14 *shall be placed in an existing appropriate county bargaining unit.*

15 *(B) In the event there is not an existing appropriate county*
16 *bargaining unit for the employees of the former contractor, the*
17 *county shall recognize and bargain with the exclusive*
18 *representative of the employees of the former contractor.*

19 *(g) This section shall apply to contracts for services entered*
20 *into on or after July 1, 2005. This section does not apply to the*
21 *renewal of contracts for services on or after July 1, 2005, where*
22 *the contract was entered into before July 1, 2005, irrespective of*
23 *whether the contract is renewed, modified, or rebid with the*
24 *existing contractor or with a new contractor.*

25 *SEC. 2. Section 37103.1 is added to the Government Code, to*
26 *read:*

27 *37103.1. (a) Except as provided in subdivision (e), the*
28 *legislative body of a city may contract for all services currently or*
29 *customarily performed by city employees to achieve cost savings,*
30 *unless otherwise prohibited, when all the following conditions are*
31 *met:*

32 *(1) The legislative body clearly demonstrates that the proposed*
33 *contract will result in actual overall cost savings to that city,*
34 *provided that:*

35 *(A) In comparing costs, there shall be included the city's*
36 *additional cost of providing the same service as proposed by a*
37 *contractor. These additional costs shall include the salaries and*
38 *benefits of additional staff that would be needed and the cost of*
39 *additional space, equipment, and materials needed to perform the*
40 *function.*

1 (B) In comparing costs, there may not be included the city's
2 indirect overhead costs unless these costs can be attributed solely
3 to the function in question and would not exist if that function was
4 not performed by the city. Indirect overhead costs shall mean the
5 pro rata share of existing administrative salaries and benefits,
6 rent, equipment costs, utilities, and materials.

7 (C) In comparing costs, there shall be included in the cost of a
8 contractor providing a service any continuing city costs that would
9 be directly associated with the contracted function. These
10 continuing city costs shall include, but not be limited to, those for
11 inspection, supervision, and monitoring.

12 (2) Proposals to contract out work may not be approved solely
13 on the basis that savings will result from lower contractor pay rates
14 or benefits. Proposals to contract out work shall be eligible for
15 approval if the contractor's wages are at the industry's level and
16 do not undercut city pay rates.

17 (3) The contract does not cause the displacement of city
18 employees. The term "displacement" includes layoff, demotion,
19 involuntary transfer to a new classification, involuntary transfer
20 to a new location requiring a change of residence, and time base
21 reductions. Displacement does not include changes in shifts or
22 days off, nor does it include reassignment to other positions within
23 the same classification and general location or employment with
24 the contractor, so long as wages and benefits are comparable to
25 those paid by the city.

26 (4) The savings shall be large enough to ensure that they will
27 not be eliminated by private sector and city cost fluctuations that
28 could normally be expected during the contracting period.

29 (5) The amount of savings clearly justifies the size and duration
30 of the contracting agreement.

31 (6) The contract is awarded through a publicized, competitive
32 procurement process.

33 (7) The contract includes specific provisions pertaining to the
34 qualifications of the staff that will perform the work under the
35 contract, as well as assurances that the contractor's hiring
36 practices meet applicable nondiscrimination standards.

37 (8) The potential for future economic risk to the city from
38 potential contractor rate increases is minimal.

1 (9) *The contract is with a firm. A “firm” means a private entity*
2 *that is a corporation, limited liability corporation, partnership,*
3 *nonprofit organization, or sole proprietorship.*

4 (10) *The potential economic advantage of contracting is not*
5 *outweighed by the public’s interest in having a particular function*
6 *performed directly by the city.*

7 (b) (1) *Any documents, including, but not limited to, cost*
8 *analyses, prepared by, or on behalf of, a city for the purpose of*
9 *complying with subdivision (a) shall be subject to the same level*
10 *of confidentiality that applies to proposals or bids of potential*
11 *contractors.*

12 (2) *Potential contractors may not be given access to documents*
13 *prepared by or on behalf of the city for the purpose of complying*
14 *with subdivision (a) prior to the time that bids, statements of*
15 *qualifications, or proposals, as applicable, are required to be*
16 *submitted to the city in accordance with the requirements for*
17 *competitive selection.*

18 (c) *Notwithstanding any other provision of this division,*
19 *contracting for services shall also be permissible when any of the*
20 *following conditions can be met:*

21 (1) *The contract is for new city functions and the Legislature*
22 *has specifically mandated or authorized the performance of the*
23 *work by independent contractors.*

24 (2) *The services are not available within the city workforce,*
25 *cannot be performed satisfactorily by city employees, or are of*
26 *such a highly specialized or technical nature that the necessary*
27 *expert knowledge, experience, and ability are not available*
28 *through the city workforce.*

29 (3) *The services are incidental to a contract for the purchase or*
30 *lease of real or personal property. Contracts under this criterion,*
31 *known as “service agreements,” shall include, but not be limited*
32 *to, agreements to service or maintain office equipment or*
33 *computers that are leased or rented.*

34 (4) *The policy, administrative, or legal goals and purposes of*
35 *the city cannot be accomplished through the utilization of persons*
36 *selected pursuant to the regular or ordinary city hiring process.*
37 *Contracts are permissible under this criterion to protect against a*
38 *conflict of interest or to ensure independent and unbiased findings*
39 *in cases where there is a clear need for a different, outside*

1 *perspective. These contracts shall include, but not be limited to,*
2 *obtaining expert witnesses in litigation.*

3 (5) *The nature of the work is such that the criteria for*
4 *emergency appointments apply. “Emergency appointment” means*
5 *an appointment made for a period not to exceed 60 working days*
6 *either during an actual emergency to prevent the stoppage of*
7 *public business or because of the limited duration of the work. The*
8 *method of selection and the qualification standards for an*
9 *emergency employee shall be determined by the city. The frequency*
10 *of appointment, length of employment, and the circumstances*
11 *appropriate for the appointment of firms or individuals under*
12 *emergency appointments shall be restricted so as to prevent the use*
13 *of emergency appointments to circumvent the regular or ordinary*
14 *hiring process.*

15 (6) *The contractor will provide equipment, materials, facilities,*
16 *or support services that could not feasibly be provided by the city*
17 *in the location where the services are to be performed.*

18 (7) *The services are of such an urgent, temporary, or*
19 *occasional nature that the delay incumbent in their*
20 *implementation under the city’s regular or ordinary hiring process*
21 *would frustrate their very purpose.*

22 (d) (1) *Except as provided in paragraph (2), this section shall*
23 *apply to all cities, including cities that have adopted a merit or*
24 *civil service system.*

25 (2) *This section does not apply to a charter city formed*
26 *pursuant to Section 3 of Article XI of the California Constitution.*

27 (e) (1) *This section does not apply to any contract for services*
28 *described in Section 4525 or Section 4529.10.*

29 (2) *This section does not apply to any contract that is subject*
30 *to Chapter 1 (commencing with Section 1720) of Part 7 of Division*
31 *2 of the Labor Code.*

32 (3) *This section does not apply to a contract for public transit*
33 *services, including paratransit services, if the city’s transit*
34 *services are fully funded by Federal Transit Administration*
35 *assistance and the city is thereby subject to the guidelines*
36 *established in FTA Circular 4220 1D or any subsequent guidelines*
37 *or revisions issued by the Federal Transit Administration.*

38 (f) *Notwithstanding any other provision of law, if any contract*
39 *for transit services is not renewed because of the standards set*
40 *forth in this section, and if the city commences to perform transit*

1 services that were provided by the former contractor, all of the
2 following apply:

3 (1) The city shall, in accordance with established hiring
4 procedures, place on a preferential hiring list, in order of seniority,
5 any qualified former employee of the former contractor to perform
6 the same job functions as performed on behalf of the former
7 contractor.

8 (2) (A) If the employees of the former contractor were
9 represented by an exclusive bargaining representative and if
10 transit services, or services similar to the transit services
11 performed by the former contractor, are also performed by
12 employees of the city, the employees of the former contractor shall
13 be placed in an existing appropriate city bargaining unit.

14 (B) In the event there is not an existing appropriate city
15 bargaining unit for the employees of the former contractor, the city
16 shall recognize and bargain with the exclusive representative of the
17 employees of the former contractor.

18 (g) This section shall apply to contracts for services entered
19 into on or after July 1, 2005. This section does not apply to the
20 renewal of contracts for services on or after July 1, 2005, where
21 the contract was entered into before July 1, 2005, irrespective of
22 whether the contract is renewed, modified, or rebid with the
23 existing contractor or with a new contractor.

24 SEC. 3. Notwithstanding Section 17610 of the Government
25 Code, if the Commission on State Mandates determines that this
26 act contains costs mandated by the state, reimbursement to local
27 agencies and school districts for those costs shall be made
28 pursuant to Part 7 (commencing with Section 17500) of Division
29 4 of Title 2 of the Government Code. If the statewide cost of the
30 claim for reimbursement does not exceed one million dollars
31 (\$1,000,000), reimbursement shall be made from the State
32 Mandates Claims Fund.

33 read:

34 ~~60622. (a) All contracts and other documents executed by the~~
35 ~~district that require or authorize the district to expend ten thousand~~
36 ~~dollars (\$10,000) or more shall be authorized by the board of~~
37 ~~directors and signed by the president and the secretary, except that~~
38 ~~the board may, by resolution for a specific expenditure, authorize~~
39 ~~the district manager or other district representative to sign~~

1 ~~contracts and other documents in the name of the district, not to~~
2 ~~exceed twenty-five thousand dollars (\$25,000).~~
3 ~~(b) All contracts and other documents executed by the district~~
4 ~~that require or authorize the district to expend less than ten~~
5 ~~thousand dollars (\$10,000) may be approved and signed by the~~
6 ~~general manager or other district representative authorized by the~~
7 ~~board of directors, provided, however, that the general manager~~
8 ~~may not execute multiple contracts or documents on behalf of the~~
9 ~~district with the same person or entity within a one-year period that~~
10 ~~cumulatively total ten thousand dollars (\$10,000) or more, without~~
11 ~~the board's prior approval.~~

